

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION TWO

In re ZACHARIAH E., a Person Coming  
Under the Juvenile Court Law.

ALAMEDA COUNTY SOCIAL  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

SABRINA E.,

Defendant;.

CYNTHIA S., et al.,

Objectors and Appellants.

A126519

(Alameda County  
Super. Ct. No. 0J08010448)

Cynthia S. and Roger S. appeal from an order denying their request for de facto parent status in this dependency proceeding. Cynthia S. is the maternal grandmother and Roger S. the maternal step-grandfather of Zachariah E. They contend that the court erred in denying their motion for de facto parent status and that proper notice of the proceeding under the Indian Child Welfare Act (ICWA) was not given to the relevant tribes. We affirm.

**STATEMENT OF THE CASE AND FACTS**

Zachariah was born on July 17, 2008. On July 23, 2008, the Alameda County Social Services Agency (Agency) filed a petition alleging that he came within the

provisions of Welfare and Institutions Code section 300, subdivision (b),<sup>1</sup> due to his mother's mental health and substance abuse issues. It was alleged that the mother, Sabrina E., reported having used cocaine, methamphetamine and marijuana while pregnant with Zachariah; that Sabrina was conserved to a psychiatric inpatient hospital for approximately four months prior to the child's birth to ensure her taking her psychiatric medication and not abusing drugs; that Sabrina was a Megan's Law Registered Sex Offender and a "290 Registrant"; and that Sabrina was homeless and lacked means to provide for Zachariah. The petition listed the father as unknown and was subsequently amended to add allegations under section 300, subdivision (g), that the identity and whereabouts of the father were unknown. Zachariah was ordered detained at a hearing on July 24, 2008.<sup>2</sup> He was placed in a foster home when released from the hospital.

Sabrina had a long history of psychiatric issues and had been on the same medications since she was 22 years old. At the time of detention, she was "basically homeless" and during the past year and a half had been hospitalized multiple times and stayed in various single-room occupancy hotels. She reported that her last drug use was about five months before Zachariah was born. Sabrina had been arrested for felony prostitution and for "annoy/etc of a child under the age of 18," and was required to register as a sexual offender under Penal Code section 290. The detention report indicated that Cynthia believed this was due to Sabrina having been involved with a 17-year-old, while Sabrina said it was because of a rumor that she had a boyfriend at Berkeley High School. Subsequent reports indicated that Sabrina had been convicted of having stalked and fondled a 16-year-old in 2003, that she was not "mentally stable" at

---

<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> At the hearing, Sabrina reported through her attorney that she was one-quarter Arapaho on the paternal side, and she completed the ICWA form. The trial court subsequently determined that ICWA did not apply in this case. Further detail will be provided in connection with our discussion of this issue, *post*.

the time, and that she was psychiatrically hospitalized after her arrest. Sabrina had been molested by her maternal grandfather, who was since deceased.

When Zachariah was born, Sabrina was observed to be oriented, open and cooperative, and “very happy and engaged with her son.” She initially told the child welfare worker that she had entrusted Cynthia and Roger (the grandparents) with care of the child, but did not want them to adopt him,<sup>3</sup> and that she planned to live with the grandparents as well, as she did not know “the effects of her medication with hormonal changes” and wanted to be sure the baby was always supervised properly. The grandparents seemed “very devoted and cooperative” and wanted to adopt Zachariah. As of July 23, 2008, both Sabrina and the grandparents were willing to have Zachariah placed with the grandparents and Sabrina live there as well. The next day, however, Sabrina no longer wanted Zachariah placed with the grandparents, reporting that she and Cynthia had gotten into an argument at the hospital the evening before, which resulted in the police and mental health mobile response team being called. Cynthia was no longer willing to have Sabrina live in her home and stated that Sabrina had threatened the grandparents’ lives. Sabrina had not been arrested or placed “under a 5150” as a result of the argument, and had stayed the night at the hospital with Zachariah. The hospital staff indicated they had not had any problems with Sabrina, who interacted “completely appropriately” with all staff and with the baby, but the staff had concerns about the “extensive difficulties” they had observed between Sabrina and Cynthia.

In early August 2008, the Agency’s jurisdiction/disposition report related Sabrina’s statements that she had started to take her prescribed psychiatric medications and was working on stabilizing her mental health. Dr. Leslie Fuchs, a psychiatrist at the Berkeley Mental Health Clinic (Clinic) who had been seeing Sabrina off and on for the past six years, stated that Sabrina needed daily medication to control her symptoms, but did “extremely well” when consistently and correctly taking her medications. Fuchs had

---

<sup>3</sup> In a handwritten letter dated June 17, 2008, Sabrina stated that she entrusted the care of her baby to the grandparents upon delivery.

seen Sabrina twice in July and was “very encouraged” that Sabrina had sought this assistance on her own. Sabrina was staying with friends and at motels.

Sabrina and the grandparents each had separate two-hour weekly visits with Zachariah. Child welfare worker Aaron Leavy observed that the mother and baby were “clearly bonded” to each other, the baby appeared happy to see Sabrina and she interacted appropriately with him. On August 4, 2008, Sabrina told Leavy that she wanted Zachariah to be placed with the grandparents and on August 6, Leavy observed that Sabrina and the grandparents related well to each other and all three were appropriate with and “emotionally and mentally connected” to the child. Leavy noted that Sabrina and her mother had difficulty getting along consistently, that Sabrina had changed her desires for Zachariah’s placement multiple times, that the child needed permanence, and that the grandparents were “exceptionally prepared and committed to the minor” and “willing to work with the mother no matter what.” The grandparents wanted to become legal guardians for Zachariah or to adopt him if Sabrina was unable to reunify, and the Agency was investigating placement with them. In a report filed on August 18, the Agency recommended that Zachariah be declared a dependent and placed with the grandparents, while Sabrina was offered reunification services, stating that Sabrina agreed with these recommendations. On August 19, the allegations of the petition were sustained and Zachariah was declared a dependent child of the court, committed to the care, custody and control of the Agency, and placed in the grandparents’ home.

At the end of January 2009, the Agency reported that Sabrina had made substantial progress, had been consistent in visitation and was determined to reunify, and recommended continuance of the dependency and reunification services for Sabrina for another six months. Sabrina was unemployed and living at a shelter in Berkeley, with Social Security as her primary source of income, and was applying for transitional housing; was reporting daily to the Clinic, where she received help with monitoring her medications and budgeting and was doing well with both; was participating in classes, individual and group therapy, substance abuse counseling and random drug testing at the

Le Cheim Adult Behavioral Health program, where her therapist reported she had made “great progress”; and was participating in Narcotics Anonymous and Alcoholics Anonymous and a weekly infant parenting class. At supervised visits, Sabrina interacted well with Zachariah and was receptive to advice and direction. Sabrina and Zachariah were meeting with clinician Meagan Parker, who reported that Sabrina was doing very well with Zachariah, but that she had observed “the unhealthy interaction” between Sabrina and Cynthia. Sabrina’s visits were scheduled to increase to two-hour sessions twice a week, once with the clinician and once at the Agency.

Sabrina had stopping talking and having contact with her mother because of their volatile relationship. She told child welfare worker Emilissa Pangilinan that she believed her mental health issues were due to her mother’s “constant lies” and accusations about her, as well as her verbal and mental abuse when Sabrina was growing up. Sabrina felt her mother was trying to take Zachariah away from her and that if her mother obtained legal guardianship or adoption, she would not be able to see Zachariah. Cynthia consistently expressed concern about Sabrina’s visitation with Zachariah, including concern that Sabrina might drop Zachariah despite assurance from the workers supervising the visits that the child was safe.

Zachariah had been living with the grandparents since August 18, 2008, and was doing well in their care, but child welfare worker Pangilinan reported that the placement had been problematic at times because of Cynthia’s relationship with Sabrina. A meeting was held on December 15, because of concern the conflicts might be impeding reunification services for Sabrina, and all agreed to maintain the current placement with the understanding that the caregiver must support reunification. Pangilinan stated that Cynthia said she wanted to help Sabrina, but later would make bitter, condescending comments toward her, and that Sabrina was at times receptive to the grandparents’ help and at other times rejected it.

At the six-month review hearing on February 3, 2009, Sabrina’s therapist told the court Sabrina was “following through with everything she’s supposed to do” and had

shown “a real drastic improvement in her commitment to her welfare in her life since she’s become a mother.” Cynthia stated that she had always supported Sabrina and “been behind her on everything until the baby came along, and then there’s just a concern for the safety of the child because the baby is a baby.” The court continued Zachariah as a dependent child, continued reunification services for Sabrina, and ordered placement with Cynthia as the permanent plan.

During the next reporting period, according to the Agency’s July 2009 report, Sabrina continued to make substantial progress, consistently attending to her case plan responsibilities and participating in services. She acquired transitional housing, her home was child proof and she had appropriate supplies for the baby; she had graduated from La Cheim and was engaged in outpatient treatment through the Clinic that included weekly home visits from her case manager or a nurse and twice weekly visits at the Clinic. In addition to participating in services, Sabrina had completed a job training course to become a literacy tutor for adult students at the Berkeley library and had obtained a yoga certificate. Dr. Fuchs reported that Sabrina was “the best she’s seen her,” focused on her child and “very adherent to treatment and recommendations,” and showed no side effects from her medication. While Dr. Fuchs “normally” had “great concern” about parents with chronic mental health issues reuniting with children, she believed Sabrina was capable of caring for Zachariah and had “made a complete turn around.” Neither she nor Parker, who had observed Sabrina with Zachariah at home and in the community, had safety concerns about Sabrina reuniting with Zachariah. Parker reported that Zachariah was a happy child and attached to Sabrina, and showed signs of developmentally appropriate separation anxiety with both Sabrina and Cynthia. Sabrina admitted having had an inappropriate relationship with a minor and continued to address this behavior in individual therapy and she was complying with her sexual offender registration requirements.

Pangilinan commented that Sabrina had “been observed by this CWW and her service providers to cope very well with her family life and personal struggles.” She was

seeking out family supportive of her reunification efforts who might be available to support her in the future, and paternal relatives and providers were supportive, including paternal aunt Denise E., several paternal cousins, and her past psychiatric nurse.

The Agency's report stated that "service providers have expressed concern regarding the maternal grandmother's intentions in the case and possibly trying to prevent reunification, despite the progress [Sabrina] has made." There had been "frequent problems" while the grandparents were responsible for transporting Zachariah to weekly visits, and "it appeared that the grandparents were possibly sabotaging visits by coming up with excuses for why they couldn't bring Zachariah to his visit." The grandparents denied this, saying Pangilinan had not consistently communicated regarding the visitation schedule. The Agency's transportation staff had taken over transporting the child since February 2009.

Pangilinan reported that Cynthia had accused all the paternal relatives of being sexual molesters, expressed concern that if Zachariah was returned to Sabrina's care he would be molested by the paternal relatives if not by Sabrina, and would become a child molester himself, and indicated the paternal relatives were all bipolar and Sabrina got this trait from the paternal side. Pangilinan had no evidence to confirm or deny these concerns. The grandparents had repeatedly expressed concerns about Zachariah's safety during visits with Sabrina, including stating, " '[t]he mother will drop him,' 'she can kill him in 11 seconds,' 'she is the prime suspect in a murder case.' " In May 2009, Cynthia said she had been in touch with the Las Vegas Police Department about Sabrina having murdered a person there. She declined to give the child welfare worker the contact information for the detective, saying " 'I don't want to give it to you because I don't want it to seem like . . . ,' " but failing to continue the sentence. According to Sabrina, she and her then-husband had been victims of a burglary in Las Vegas in 2002, during which she was raped and her former husband was stabbed and killed; she had cooperated with the police but they had not found the perpetrator and she believed the case had gone "cold." Pangilinan had requested information from the Las Vegas Police Department, but had not

received any by the time the status report was written. At a team meeting on July 8, 2009, Cynthia opposed unsupervised visits and efforts to increase Sabrina's visitation despite all service providers commending Sabrina's progress. Cynthia said she felt grandparents have no rights and she hoped the court hearing would be in their favor, as they wanted to pursue adoption or legal guardianship rather than returning Zachariah to Sabrina.

Pangilinan reported that Zachariah had an all-day visit with Sabrina on July 10, which went "very well." After an overnight visit from July 16 to 17, Cynthia reported that Zachariah returned " 'wheezing' " and did not stop until 1:30 p.m. on Sunday. The family preservation worker who observed Zachariah upon his return from the visit, however, did not notice any wheezing, and noted that he appeared fine and happy. Cynthia reported that Zachariah was born with respiratory problems and a history of wheezing due to Sabrina's smoking habits, but his pediatrician indicated that the child had not been diagnosed with asthma or a history of respiratory problems. Cynthia reported that Zachariah knew the bag for his visits and cried before the visits, then had a hard time sleeping and eating after returning from them.

Pangilinan recognized that the grandparents were concerned because of Sabrina's history of untreated mental illness, but stressed that all the service providers reported Sabrina was stable and able to adequately parent Zachariah during visitation. Pangilinan stated that in each contact she had with Cynthia, Cynthia would "slander, minimize, dismiss, or disregard mother's efforts to reunify with her child." Cynthia also complained about Pangilinan and the reunification process, and made it "very difficult" for Pangilinan to move forward because of her constant allegations that Sabrina would hurt or kill Zachariah despite the absence of new evidence to support her claims.

At this point, in July 2009, the Agency recommended an extended trial visit for the minor in Sabrina's home. Just before the status report was filed, on July 17, the



grandparents filed an application for de facto parent status.<sup>4</sup> The grandparents urged that they had acted as parents to Zachariah for most of his life and met all the requirements for de facto parent status, and that they were committed to caring for him for as long as he needed their support. They stated that before the baby was born, Sabrina had asked them to care for him, but “she ha[d] a violent outburst in the hospital and attacked a nurse and CPS was called and they took custody of him.” The grandparents stated that they had prevented Sabrina from having an abortion and had requested her confinement during the pregnancy, and that they had had responsibility for Zachariah’s day-to-day care since August 18, 2008, and spent 24 hours a day with him, except for Sabrina’s supervised visits. Cynthia subsequently testified that she loved Sabrina, thought the support she had was wonderful, and understood the goal of the case was reunification, but wanted de facto parent status because she had concerns that no one was listening to them. The grandparents submitted a letter from Zachariah’s pediatrician stating that they had provided “superb care” and Zachariah was “developing wonderfully” and “clearly very attached” to them.

A number of hearings were conducted in July, August and September 2009, on the grandparents’ request and the status of the case. The court ordered an extended weekend visit in late July, which the Agency reported to have gone “wonderfully.” Cynthia, however, reported that when Zachariah returned, he had an abnormal bowel movement, wanted to eat more than usual and regressed, not feeding himself or walking. At the July 29 hearing, the court declined the Agency’s request, supported by Sabrina’s and Zachariah’s attorneys, for a 30-day visit, instead ordering successive extended weekend visits. Subsequently, on September 1, the court granted the request for a 30-day trial visit.

---

<sup>4</sup> Cynthia subsequently testified that she learned about de facto parent status after she called President Obama’s office and was directed to Advocate Children in San Mateo, who told her this would give her a way to communicate with the Agency and the baby’s attorney, and got a referral for an attorney after learning that the Agency was going to ask for Zachariah to have a month-long visit with Sabrina.

The concerns enumerated by the grandparents in their application for de facto parent status, accompanying documents and subsequent testimony, included Sabrina's ability to care for Zachariah, her mental health issues and potential violence, and the Agency's failure to listen to the grandparents' concerns.

The grandparents described Sabrina's history of mental illness since 1988, listing multiple hospitalizations, including three since Zachariah's birth ("twice by 5150, 5250 and the third voluntary"); noted that they had found Sabrina "collapsed at her resident hotel," and had paid for hotels or allowed her to stay with them between hospitalizations; and stated that Sabrina had trouble keeping track of and staying on her medications, that the Clinic was "giving her medication daily," that they were concerned about how Sabrina could care for a baby if she could not even maintain her own medication; and that Sabrina had "a problem with setting fires either intentionally or by accident when cooking and she loses track of time." Cynthia testified that Sabrina was hard to wake up when she was on medication, and that even on medication she had instances where "a different personality comes out" and she would become violent, as well as that Sabrina had told her she was concerned about how "the change of life" was affecting her because her medications "weren't working the same way."<sup>5</sup>

The grandparents further stated that Sabrina had been violent with them repeatedly and had threatened to kill them if they did not give her money for drugs, most recently in 2007; that Sabrina and a man at her house had threatened them with knives in 2003; and in 2004 or 2005, the grandparents were called because Sabrina had threatened the clerk at a hotel with a homemade bomb. Sabrina had made "life threats" to Zachariah and the grandparents.

---

<sup>5</sup> Cynthia said this conversation about medication took place when Sabrina "turned 42," which, taken literally, would have been January 2009. Sabrina testified in September 2009 that she had not discussed her medication with Cynthia within the last 12 months.

Cynthia was concerned about Sabrina having inappropriate sexual contact with Zachariah because of Sabrina's history. The grandparents stated that Sabrina had "a pattern and history of stalking and inappropriate conduct with teenage boys," and that in 2003 church elders had asked the grandparents to keep Sabrina away from the teenage children. According to the grandparents, Sabrina stated at a team decision making meeting that she did not know why her mother was so worried because Zachariah "was not old enough for me to molest yet." The grandparents said they were shocked by this comment, but none of the other 11 or more people at the meeting reacted to it. Pangilinan did not recall Sabrina making this comment and stated that Cynthia never told her about it; Sabrina categorically denied making the remark.

Cynthia stated that the Berkeley police officer with whom Sabrina registered as a sex offender "told us that we needed to be careful that our daughter was a person of interest in a murder investigation" in Nevada. The detective in Nevada told Cynthia the investigation was confidential, but "he felt the need to warn us about her." Cynthia said that both officers "expressed grave concerns about the child being placed with her based on her record."

Cynthia believed that Zachariah was attached to her and her husband, and less so to Sabrina, and that there was no one who knew Zachariah as well as she and her husband. After the court sustained objections to a series of questions attempting to compare Cynthia's care of Zachariah with Sabrina's, Cynthia testified that did not feel Sabrina was ready to have the baby placed with her, explaining "I don't feel that she's ready yet. I have known my daughter her whole life. I have helped her through all her medical needs. I am providing food and clothing for her as well and money." When subsequently asked about the last point, Cynthia said she bought Sabrina cell phone minutes a couple of months before, last paid for her medication in 2008, and gave her money "steadily" in the diaper bag, along with food she made for Sabrina. She testified that Sabrina said she needed money for food and coffee, and asked Cynthia to send supplies for the baby. Sabrina subsequently testified in September 2009 that the last time

she had received money from her mother was \$4, probably more than six months before, and that while Cynthia sent food, clothing and diapers when the baby came for visitation, Sabrina already had these items for him.

According to Cynthia, Zachariah returned from visits with Sabrina wheezing, as described previously, and with separation issues such as not sleeping well, waking up screaming, and refusing to let go of the grandparents. He returned from a visit “so constipated that he bled when he had a bowel movement.” At a hearing in September 2009, Roger testified that Zachariah had returned from his last visit with Sabrina with a severe diaper rash with blisters, which the grandparents and then the doctor photographed. Roger did not know whether the doctor sent the photographs to the Agency, and the photographs the grandparents took were with their attorney; he said he did not know why they did not give the photographs to Pangilinan, then said it was because she had refused to look at the baby when they asked her to. Roger testified they took Zachariah to the doctor on successive Mondays in August, after his weekend visits with Sabrina, and found he had lost four ounces on the first visit, six ounces on the second, and four ounces on the third. The doctor said the weight loss was due to the days Zachariah was with Sabrina and not the rest of the week, although Roger did not know how the doctor knew this. In September, the grandparents called the police and requested a “welfare check” while Zachariah was with Sabrina, after receiving a call from their pediatrician saying he had not heard from the Agency’s doctor or Pangilinan about whether Zachariah was being weighed or looked at. The grandparents were worried because Zachariah had lost weight and they had not been able to see him. They expressed concern about Sabrina’s ability to feed the baby, saying he would not accept food from her.

Cynthia also said she was concerned about Sabrina providing proper stimulation, such as play time and reading, because Zachariah would hit and slap the grandparents when he returned from the weekend visits. Asked whether anyone else had seen these and the other separation behaviors Cynthia described after the weekend visits, Cynthia

indicated her neighbor Rosa, who had twice babysat for Zachariah. Cynthia subsequently declined to give Rosa's contact information to the Agency, saying she was contacting her attorney about it, then provided the information to the court at a hearing.

The grandparents stated that their expressions of concern to the social worker were met with threats that Zachariah would be removed from their home. "When I had mentioned that I had been told by the pediatrician that Sabrina could kill this child in 11 seconds she says she does not know why I would say such things. Sabrina was upset because the baby was constantly crying and it was bothering her, and I had mentioned it to the pediatrician. He had indicated that we needed to watch out because she could snap and could kill the baby in 11 seconds. He told me to tell the social worker about his concerns. So I told the worker about this, but instead of insuring the child's safety she just used it as an example of my saying bad things about my daughter."

Cynthia testified that she told the social worker about Sabrina "continuously" calling her from the hospital, complaining about the baby crying, "being threatening," and saying she "couldn't stand" the crying because she did not like noises. Cynthia also told the social worker Sabrina had told her, " 'If I can't have Zachariah, he is going to die. You try to get him from me, I will kill you, and Dad too.' " According to Cynthia, the social worker responded, "that 'we were not bad grandparents and that there was not a matter of concern.' " Cynthia testified that the social worker said she did not care what Cynthia thought about Sabrina, that she decided who would get the baby and that if Cynthia tried to get legal help, she would "pull the baby from our house and I would never find him in foster care."

Cynthia had expressed her concerns to Pangilinan in telephone calls and faxes but, when she brought Zachariah for visitation, Pangilinan was too busy to talk to her. Cynthia testified that she had attended three team decision making meetings, but was not given an opportunity to present any information to the group and was not asked if she had any concerns. She stated that the issue of her noncompliance with visitation was resolved at the meeting in December 2008, when she presented a chart showing that most of the

missed visits were when Sabrina was hospitalized or for reasons such as Cynthia being ill or the car being in the repair shop, and that she was given some opportunity to participate at the July 2009 meeting, but not included in all of the discussion. Cynthia said she wanted de facto parent status so the baby could have a voice in court, although she acknowledged that it was Zachariah's attorney's job to speak for him.

Pangilinan testified that the December 2008 meeting was run by a facilitator and she recalled Cynthia participating in the portion of the discussion concerning the plan and in the July 2009 team meeting. Pangilinan denied having ignored Cynthia's concerns or having told Cynthia that she did not want to hear her concerns or that the grandparents had no rights. She testified that Cynthia would cut her off when she tried to tell her about Sabrina's progress. According to Pangilinan, most of her conversations with Cynthia were about Cynthia's concerns and allegations, initially regarding Sabrina's care of Zachariah, mental health and medication; the first time Cynthia raised her concerns about Sabrina's molestation history and about the Nevada murder case was May or June of 2009. Pangilinan followed up with the Nevada police, and eventually was informed there was no reported criminal arrest or history for Sabrina. She also followed up with the Berkeley police and confirmed the sexual offender registration.

In contrast to Cynthia's views, the Agency's reports on Sabrina's progress were consistently good. During a weekend visit, Sabrina and Zachariah looked "very well" and Sabrina seemed to have "everything in place to care for the minor." Sabrina kept all appointments and met all treatment goals with Parker, who observed her putting parenting recommendations into practice and Zachariah exhibiting attachment behaviors toward Sabrina, and Parker had no concerns about Sabrina's ability to care for the child. Staff at Sabrina's transitional housing program monitored Sabrina daily and reported that during his visits Zachariah was fed, cleaned and bathed appropriately. Sabrina's case manager at the housing program testified that Sabrina was "very lovingly, caring with that baby," supervised him carefully and consoled him, and that the baby seemed well adjusted and happy with Sabrina. Both the case manager and Parker had witnessed

Zachariah's "random tantrums and hitting when he is frustrated," and stated these were normal behaviors for his age. Pangilinan observed that Zachariah was "an overall happy, playful and curious child," and his starting to "hit, grunt and yell" when he did not get what he wanted was normal one-year-old behavior that "should not be used and framed in a way to discredit mother's ability to parent her child."

Pangilinan reported that Sabrina was substantially meeting her case plan, she had no information Sabrina was not taking her medication, and she had not observed Sabrina hold Zachariah in a way that was inappropriate or posed a risk to him. Sabrina had a large support network and was participating in parenting classes and a mothers' support group at her housing program, as well as continuing to work on parenting skills with Parker.

On Monday, August 17, 2009, a transportation worker who had not been given the updated visitation schedule called Cynthia, causing Cynthia to worry about Zachariah. Pangilinan stated that although Cynthia had been in court when visitation was ordered to run until Tuesday, August 18, Cynthia responded to the call by reporting she did not know where Zachariah was and "called everyone in CPS including the emergency hotline." Sabrina reported that Cynthia called her and left a message saying, "'[y]ou need to call me because I have the police on the other phone and transportation is saying they have the baby.'" Sabrina told Pangilinan that she called Cynthia to say Zachariah was safe with her and that this was "another way for [Cynthia] to make more drama." Sabrina said her mother knew she was doing well in her reunification efforts, but "'I am already prepared for her calling CPS again in the future alleging I am a suspected child abuser.'" "

Pangilinan reported that when she transported Zachariah from the grandparents' home to Sabrina's on August 20, he was crying and fussy. He had just received three vaccinations and Pangilinan believed he was not feeling well as a result of the shots; Cynthia believed he was irritable because he was upset at having to go to visit his mother and did not understand why he had to go back and forth.

In August, the court ordered Sabrina and the grandparents to participate in family therapy. Sabrina told Pangilinan she would comply with the order, but was fearful about therapy with her mother because she believed she had maintained her mental health stability by distancing herself from her mother.<sup>6</sup> After the initial session in September, Sabrina stated that she would not attend another session with Cynthia because it was nonproductive, Cynthia lied to the therapist, and Sabrina did not want to “open the door for her to criticize me any further.” The therapist reported that Sabrina felt Cynthia was the reason for many of her issues and had not been supportive of her, and that she observed a lot of acrimony between Sabrina and Cynthia. Cynthia felt she had gone “above and beyond” in helping Sabrina, and wanted to make sure the therapist told Pangilinan that the grandparents wanted to adopt Zachariah if reunification was not successful.

The Agency strongly opposed de facto parent status for the grandparents because of the “volatile and unstable” relationship between the grandparents and Sabrina, the emotional effect this relationship might have on Zachariah, and the likelihood of disrupting Sabrina’s mental health stability. Pangilinan questioned the grandparents’ intentions in seeking de facto parent status, stating that although Cynthia said she had good intentions and this might have been true in the past, “at this time she is observed to constantly demean and put [Sabrina] down by referring to her past events all prior to August 2008. This CWW has witnessed [Cynthia] make false statements about all parties involved in support of [Sabrina’s] efforts to reunify.” Pangilinan stated that Cynthia’s allegations of Sabrina being under investigation as a murderer, being a child molester, and being unable to care for her child due to mental health had all been unfounded; that

---

<sup>6</sup> Sabrina stated, “ ‘I am mentally ill because of my mother, and I don’t want what happened to me, happen to my son. . . . Over the years she has tried to make me unstable and is known to be very competitive and strong willed and railroads people over to try to achieve her own objectives. I believe I am more stable because I do not associate with her. . . . I know my mom has a lot of her own mental health issues but my goal is not to discredit my mother but to get my son back, which is my main focus.’ ”



although Cynthia loved Zachariah, she was using the fact of her having cared for him “as leverage and control over her daughter,” and that Cynthia’s inability to acknowledge Sabrina’s progress was “a strong indicator of how dysfunctional mother and maternal grandmother’s relationship really is which would be emotionally and possibly physically detrimental to the well being of this child.”

On August 28, 2009, the Agency filed a memorandum requesting a 30-day trial visit as soon as possible. At the hearing on September 1, counsel for the child argued for beginning the 30-day visit and Pangilinan reported favorably on Sabrina’s progress. In response to the court’s question about Zachariah’s diaper rash, Pangilinan stated that there was no indication of blisters or scars “or a rash that was—,” and counsel for the grandparents interrupted that this contradicted a letter from the pediatrician stating the diaper rash was “ ‘quite severe.’ ” The court agreed with counsel for the Agency that it was inappropriate for the grandparents’ attorney to participate when the grandparents were not parties and the attorney agreed that she would have the grandparents address the issue. Counsel for the Agency expressed concern that when Zachariah returned from visits with Sabrina, the grandparents were “very quick to rush the child to the doctor to try—apparently to get some sort of diagnosis that some sort of terrible harm has befallen the child in the mother’s care. It almost seems like the grandparents are trying to sabotage the reunification with the mother, which is the most appropriate plan at this time.” The court asked if this had happened recently, and Pangilinan said that after the second to last visit, Cynthia took the baby to the doctor because he had a deep cut in his arm and a cut on his finger and “nothing came of that.”

The court ordered a 30-day trial visit to begin immediately. Although the court initially declined to hear from the grandparents, it then permitted Cynthia to make a statement. She stated that the pediatrician was concerned because Zachariah had lost six ounces after a visit with Sabrina, then another four ounces after the next visit, and that the diaper rashes had become “really bad,” with bleeding from the last one and blisters that broke open. Cynthia said she took Zachariah to the doctor only when she had to, and that

when she asked Pangilinan to look at the diaper rash and pointed out a “nick” under the baby’s eye and a bruise under his chin, the social worker refused to look. Pangilinan denied this conversation had occurred.

In its report filed on September 18, the Agency recommended that the court order family maintenance services for Sabrina and deny de facto parent status to the grandparents. Pangilinan reported that when she picked Zachariah up from the grandparents on September 2, Cynthia gave her the baby bag and said, “ ‘[t]his is all that’s going with him, since Sabrina says she has everything and everything else is our stuff that we paid for.’ ” Cynthia was very angry, yelled and made condescending remarks toward Pangilinan and the Agency. Pangilinan delivered Zachariah and observed Sabrina interacting appropriately with the child and him appearing very happy and playful. On September 17, Sabrina and a parent advocate took Zachariah for a physical examination and he was found to be in good health and in the 50th percentile for weight. Sabrina continued to have “overwhelming support” from her paternal family, to be supervised by Whitley from the housing program, to participate in parenting classes, to be visited weekly by Pangilinan, Parker, a family preservation worker and a parent advocate, and to be visited twice a week by her Clinic case manager or nurse. Sabrina was going to the Clinic for individual therapy and medication and had arranged back up emergency child care with a friend or her paternal aunt.

With respect to the de facto parent application, Pangilinan stated that she had witnessed the grandparents “try to sabotage Reunification efforts of the mother in order to adopt Zachariah,” continue to make unfounded accusations, and fail to acknowledge or support Sabrina’s progress. Pangilinan stated that the relationship between Sabrina and Cynthia continued to be “volatile” and was detrimental to the child’s well being, and that paternal relatives she was close to were supportive and willing to be her back up caregivers in case of emergency.

At the hearing on September 21, Sabrina testified that she had been taking her medications faithfully for the last six months, met with the prescribing psychiatrist once

or twice a month, and was “doing really well.” She had been hospitalized twice since Zachariah’s birth, for two weeks each time, most recently in September 2008. She had not run out of medication for at least the last 12 months. Her income was from social security. Zachariah had had normal diaper rashes from time to time, but not severe ones with cuts or blisters. Sabrina described how she had learned to treat diaper rash from other mothers and professionals and testified that a pediatrician had said the week before that there was no diaper rash.

Sabrina testified that Cynthia had seen her with Zachariah very little; other than one shared visit when he was three months old, only for the few minutes of transferring him between them. Cynthia had been at all three team decision making meetings and was allowed to express herself freely at them. Cynthia’s claim that Sabrina set fires was not true. Sabrina felt she had been medically stable since September 2008, and believed this was because losing her son motivated her to take her medications faithfully and keep her appointments, that her medications had been adjusted, and that she was not in contact with her mother. Having the support of the treatment team helped her to be a good mother and the clinic had stated this support would continue to be available to her as maintenance.

Pangilinan testified that when she told the grandparents’ pediatrician that she had checked Zachariah and not seen blisters, scars or redness, he responded that he was not as concerned about the diaper rash as with the weight loss. The doctor did not say he had taken photographs of the diaper rash because it was so severe, nor did he indicate he believed the weight loss was due to Zachariah being in Sabrina’s care. This conversation took place after the September 1 hearing, at which Pangilinan received a copy of a letter from the pediatrician, which referred to marks he had seen on the child. She did not attach this letter to a court report and did not directly mention the pediatrician’s concerns because she felt she had already addressed the issues of the diaper rash and weight loss as expressed by Cynthia. Pangilinan had asked Cynthia for copies of the photographs Cynthia said she had taken to document the rash, but Cynthia never showed them to her.

Pangilinan was the person who oversaw the exchange between caregivers and each time she checked Zachariah's condition, generally by observing Sabrina change him in her presence. She saw some redness at one point, but never blisters or scarring. In response to questions from the court, Pangilinan testified that she had looked at Zachariah's medical records and they showed no indication he had diaper rash consisting of blisters and lesions. The court noted that the September 16 doctor's report stated "no rash."

The court denied the petition for de facto parent status, set aside the order for out-of-home care, and returned care, custody, conduct and control of the child to Sabrina, with family maintenance services. The Agency was given discretion to arrange supervised visitation for the grandparents.<sup>7</sup>

On October 19, the Agency filed a memorandum reporting that Sabrina was continuing to provide appropriate care for Zachariah, obtain resources needed for him, and attend her mental therapy appointments. Pangilinan reported that Cynthia had called her the day after the last court hearing to express how upset the grandparents were, "slander mother's parenting efforts," and say that they were appealing and hoping to get custody. Pangilinan stated that Cynthia continued to be very difficult to work with and blamed Pangilinan and the Agency for her volatile relationship with Sabrina. Cynthia made "disturbing" and "threatening" comments to Pangilinan concerning Sabrina, Zachariah and Pangilinan herself.<sup>8</sup> On October 15, Sabrina told Pangilinan that the

---

<sup>7</sup> After these orders were made, Cynthia stated that the detective from Las Vegas was coming to interview Sabrina because she was still a person of interest, and the grandparents were concerned about Sabrina's reaction and Zachariah's safety. The court told Sabrina to make sure her social worker and support people knew if she was contacted by law enforcement. Counsel for the Agency and for the child objected to having these remarks on the record, and asked that they be stricken; the court denied this request because it wanted the social worker to hear the concern that Sabrina might react poorly to being contacted by law enforcement so that Sabrina would have support if this happened.

<sup>8</sup> Pangilinan reported Cynthia having said: "You should be careful because I heard of a little boy dying due to the CPS Worker's negligence and you don't want to be in that situation; You're the only Worker that has said bad things about us, we really

grandparents had gone to her transitional housing claiming to deliver milk to her. Staff told them they were not allowed on the premises and would have to go through the Agency to deliver items for the child. Pangilinan stated that the grandparents knew Sabrina wanted to keep her information confidential and not have contact with them, but they “continue to push the issue.” Cynthia continued to make negative remarks about Sabrina, her mental health issues, and her care of Zachariah in October, and Sabrina reported that Cynthia “would leave lengthy threatening messages as well on her voicemail.”

Pangilinan supervised a two-hour visit for the grandparents on October 15. The grandparents’ “physical interaction” was “very appropriate” and Zachariah appeared to enjoy the visit, but Cynthia made several inappropriate comments toward the child, including, “How come your not using your words Zach? Are you slow? He’s not growing he still fits in that shirt he may have growing issues are you going to be short? You use to be a lot more trusting; He is institutionalized he doesn’t play with other children; Neighborhood kids are asking when are you coming back home?” During the visit, Cynthia started talking about Sabrina and the case and Pangilinan reminded her she would not discuss the case during a visit. After the visit, when Cynthia was directed out the back of the building so Pangilinan could load the county car with toys and other items from the grandparents’ car while Zachariah was brought to Sabrina in the waiting room,

---

didn’t have a problem until you took over the case; We will go as far as we can and I will write to all my senators, Diane Feinstein and I will put your name on every piece of paper, that would put a bad light around you; You know what I’ll do, I will make reports about Sabrina, since your not cooperating with us and since Sabrina is not letting us see the baby we’ll just call another health and wellness check; You are causing us a lot of stress and distress, it’s like punishment and mental abuse towards us; We are Jehovah’s witnesses and we go door to door, and Berkeley is in our jurisdiction so if we by chance see her in Berkeley that’s not our fault, that’s our religious right; I have called [the pediatrician] and told him what you think of me and my husband.” Cynthia also reportedly “tried to manipulate this CWW by bringing up the CWW’s personal family information which was never disclosed to her including where this CWW lives.”

Cynthia “became irrational and argumentative” and told Pangilinan, “[y]ou are the reason for this rath [*sic*] and why me and my daughter do not get along.”

On October 23, 2009, the grandparents filed a notice of appeal from the denial of their motion for de facto parent status.<sup>9</sup>

## DISCUSSION

### I.

Rule 5.502(10) of the California Rules of Court defines “de facto parent” as “a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling both the child’s physical and psychological needs for care and affection, and who has assumed that role for a substantial period.” A de facto parent is entitled to be present at the dispositional hearing and any subsequent hearing at which the dependent child’s status is at issue, to be represented by retained counsel or, at the court’s discretion, by appointed counsel, and to present evidence. (Rule 5.534(e).)

Our Supreme Court has reasoned that “[t]he participation of interested de facto parents in custodial litigation promotes correct disposition . . . because ‘such persons who have experienced close day-to-day contact with the child’ are among the custodial alternatives the court must appraise, and their views ‘deserve consideration.’ ” (*In re Kieshia E.* (1993) 6 Cal.4th 68, 75, quoting *In re B.G.* (1974) 11 Cal.3d 679, 693.) “The de facto parenthood doctrine simply recognizes that persons who have provided a child with daily parental concern, affection, and care over substantial time may develop legitimate interests and perspectives, and may also present a custodial alternative, which should not be ignored in a juvenile dependency proceeding. The standing accorded de facto parents has no basis independent of these concerns. Moreover, as we said in *In re B.G.*, *supra*, the key to the privileged status of de facto parenthood is adherence to ‘the

---

<sup>9</sup> The notice of appeal additionally referenced orders of September 1 and 21, 2009, granting Sabrina 30-day trial visits. No challenges to these orders were raised in the grandparents’ briefs.

role of parent,’ both physical and psychological. (11 Cal.3d at pp. 692-693 . . . .)” (*In re Kieshia E.*, at pp. 78-79.)

“Whether a person falls within the definition of a ‘de facto parent’ depends strongly on the particular individual seeking such status and the unique circumstances of the case.” (*In re Patricia L.* (1992) 9 Cal.App.4th 61, 66.) “The decision to grant de facto parent status turns on the facts of each case. Although the Supreme Court has not set forth specific guidelines for a juvenile court to apply in determining de facto parent status, courts have generally considered such factors as whether ‘(1) the child is “psychologically bonded” to the adult; (2) the adult has assumed the role of a parent on a day-to-day basis for a substantial period of time; (3) the adult possesses information about the child unique from other participants in the process; (4) the adult has regularly attended juvenile court hearings; and (5) a future proceeding may result in an order permanently foreclosing any future contact [between] the adult [and the child]. [Citations.]’ (*In re Patricia L.*, at pp.] 66-67.)” (*In re Jacob E.* (2004) 121 Cal.App.4th 909, 919.)

“Recognizing that a court can only benefit from having all relevant information on the best interests of the child, appellate courts also have observed that de facto parent status ordinarily should be liberally granted. (*In re Patricia L.*, *supra*, 9 Cal.App.4th at p. 67.) ‘If the information presented by the de facto parent is not helpful, the court need not give it much weight in the decisionmaking process. [Citation.]’ (*Ibid.*)” (*In re Jacob E.*, *supra*, 21 Cal.App.4th at p. 919.)

“The party seeking de facto parent status has the burden of proving, by a preponderance of the evidence, that he or she falls within the statutory definition.” (*In re Jacob E.*, *supra*, 121 Cal.App.4th at p. 919.) “The denial of a petition for de facto parent status is reviewed for abuse of discretion. (*In re Leticia S.* [(2001) 92 Cal.App.4th 378,] 381.) ‘In most cases, the lower court does not abuse its discretion if substantial evidence supports its determination to grant or deny de facto parent status.’ (*In re Michael R.*

(1998) 67 Cal.App.4th 150, 156, citing *In re Krystle D.* (1994) 30 Cal.App.4th 1778, 1809.)” (*In re Jacob E.*, at p. 919.)

In the present case, the grandparents sought de facto status on the basis that they had assumed the role of parents for almost all of Zachariah’s life; possessed unique information about the child from being his caregivers and about Sabrina from having raised her; had been deprived of information about how Sabrina was doing; and felt they had no other way to bring to the court’s attention their concerns about Sabrina’s ability to care for the child. Counsel for Sabrina, Zachariah and the Agency all opposed the request. Counsel for the Agency argued that the grandparents’ information was not credible or reliable; it was improper for the grandparents to argue they did not know how Sabrina was doing when they acknowledged having been at the meetings where the team reported on her progress; and granting de facto parent status would only allow the grandparents to continue to “spew the negative information that they want[] this Court to focus on,” when the Agency had investigated all their concerns and found them to be false or misleading. Arguing that the grandparents’ motivation was to keep the child away from Sabrina, counsel emphasized that in the court-ordered family therapy, which occurred after the 30-day visit had begun, Cynthia told the therapist to be sure to tell the child welfare worker that they wanted to adopt Zachariah if reunification failed.

The court noted that it had been presented with a lot of information over the course of at least three hearings on the motion, and had had “a lot of reflection.” In a lengthy explanation of its reasoning, the court told the grandparents that Sabrina had made “tremendous progress from all indications” and, even from the court’s own observations over the months, “her whole demeanor is better.” The court expressed hope that the grandparents would be able to acknowledge this in time and commended them as “wonderful grandparents” who stepped in when they were needed. The court agreed that the grandparents met many of the legal factors for de facto parent status in that they had assumed the role of parent on a daily basis; they were “probably” psychologically bonded with Zachariah (the court noted it was “hard to tell” with a 14-month-old child); and it



was possible that a future proceeding could result in an order permanently foreclosing contact with the child (although the court expressed hope to the contrary).

The court believed that the most important factor was whether the grandparents possessed unique information to assist the court in making decisions in the best interest of the child. As to this, the court explained, “I thought so at the beginning and somewhat through the process. I don’t think so at this point. I really don’t think so. And I’ll tell you why. [¶] I think unfortunately because of your love for this child, . . . you have just allowed it to get a little out of hand here, and some of your accusations just frankly are wild. And I am real concerned about that for the future relationship of you with this child.” The court told the grandparents that they had a good lawyer and if they had had more information that Sabrina was a murder suspect, information that her prior sex offender registration requirement posed a danger to the child, or that she was neglecting the child with regard to physical issues, their lawyer would have been able to present it to the court. The court expressed concern about the grandparents’ motivation and said that while the court wished for them to have an “appropriate, responsible and loving relationship” with Zachariah and Sabrina, “I don’t think you possess unique information for the Court. And I don’t want the Court to be side-lined by wild accusations in the future, and we want to look responsibly as [*sic*] evidence.” The court confirmed with Pangilinan that the grandparents could always call her to express their concerns, and requested her to respond to any inquiries they might have and, if they had a “responsible” concern or complaint, investigate it.

The grandparents contend the court erred in its determination that they did not have unique information to provide, and in denying de facto parent status where only one of the relevant criteria was not met. As to the first point, the grandparents urge that although the court was receiving information about Sabrina’s current circumstances from numerous sources, Pangilinan was opposed to consideration of any events prior to Zachariah’s birth and the court evidenced its agreement with this position by stating its desire not to become side-tracked by “wild accusations” such as Sabrina being a murder

suspect or a danger to Zachariah due to her sexual offender registration or neglect. The grandparents urge the court should have considered the details they could provide about Sabrina's history of mental illness and sex offenses, including the circumstances existing on past occasions when Sabrina had stopped taking her medication, examples of problems she exhibited even when taking her medication, and information regarding other boys the grandparents believed Sabrina had molested. The grandparents urge that the trial court abused its discretion by ignoring the observation in *In re Patricia L.*, *supra*, 9Cal.App.4th at page 67, that "a court can only benefit from having all relevant information on the best interests of the child."

The trial court's careful explanation of its ruling makes clear that its decision was based on the potential for the grandparents to derail the reunification process with unfounded allegations, as well as the potential for problems with the grandparents' relationship with Zachariah and Sabrina. The court took the grandparents' concerns seriously during the proceedings, as evidenced, for example, when it declined to order the 30-day trial visit that all parties pressed for after Cynthia's testimony "amplified" concerns the court already had based on the Agency's reports. The grandparents had been excellent caregivers for Zachariah, as acknowledged by all parties and the court. According to the Agency's reports, however, they had consistently refused to acknowledge the progress Sabrina was making and made claims about the dangers she posed to Zachariah that conflicted with the observations of the child welfare workers and all of the service providers who worked with Sabrina, as well as appearing to be unfounded when investigated by the Agency.

In *In re Vincent C.* (1997) 53 Cal.App.4th 1347, the grandmother who had been caring for the dependent children became unable to control them. She sought de facto parent status, although she agreed a different placement was needed, because she wanted to be heard on the proper disposition. Reversing the trial court's denial of this request, *In re Vincent C.* explained: "In our view, a juvenile court should not deny a request for de facto status based upon some vague concern that such participation will lengthen the

hearings or somehow interfere with the goal of providing the child with a stable and loving home. To the contrary, where a grandparent or other close relative has cared for a dependent child for an extended period of time and has never done anything to cause substantial or serious harm of any kind to that child, there ought to be a very good reason for denying de facto status—particularly where, as here, the caretaker concedes that she is no longer able to care for the children herself and simply asks to be heard regarding their future placements. (See, e.g., *In re Joshua S.* (1988) 205 Cal.App.3d 119, 122-125; *Christina K. v. Superior Court* (1986) 184 Cal.App.3d 1463, 1466-1469; *Charles S. v. Superior Court* (1985) 168 Cal.App.3d 151, 156-157; Cal. Rules of Court, rule 1412(e) [now rule 5.534(e)] [the juvenile court may recognize the child’s present or previous custodian as a de facto parent and grant standing to participate as a party in disposition hearings and any hearing thereafter at which the status of the dependent child is at issue].)” (*In re Vincent C.*, at p. 1358.)

In the present case, the grandparents did not have the objectivity regarding placement that the grandmother had in *In re Vincent C.*: Cynthia and Roger actively sought to adopt Zachariah rather than have him reunify with his mother. In so doing, they made allegations concerning the mother’s history and present ability to care for the child that were not borne out by the Agency’s investigation or the service providers’ reports. This in turn led to the court’s conclusion that the grandparents’ participation as formal parties would interfere with, rather than assist, the progress of the case.

An “applicant who otherwise qualifies as a de facto parent may be denied that status by acting in a manner fundamentally inconsistent with the role of a parent.” (*In re Merrick V.* (2004) 122 Cal.App.4th 235, 257.) Here, the grandparents did not directly cause substantial harm or put Zachariah at risk of such harm in the manner of applicants denied de facto parent status in other cases. (See, e.g., *In re Kieshia*, *supra*, 6 Cal.4th at pp. 79-80 [mother’s boyfriend, found to have molested child, not entitled to de facto parent status]; *In re Merrick V.*, at pp. 257-258 [grandmother not entitled to de facto parent status because she put children at risk of substantial harm by leaving them with

mother, known to use drugs and have unstable lifestyle, resulting in two-year-old twins being found wandering outside in January in dirty diapers with blood test positive for methamphetamine and marijuana]; *In re Jacob E., supra*, 121 Cal.App.4th at pp. 920-921 [grandmother who provided inadequate care and failed to cooperate with Agency not entitled to de facto parent status because her conduct was “fundamentally at odds with the role of a parent”]; *In re Michael R., supra*, 67 Cal.App.4th at pp. 156-158 [grandmother refused to acknowledge role of son who abused children, violated agreement with Agency by allowing son unsupervised access to children, took children from jurisdiction and kept them hidden to permit son unrestricted access].) Cynthia’s and Roger’s physical care of Zachariah was by all accounts excellent.

But the goal of the case was reunification and, by all reports save the grandparents’, Sabrina was progressing admirably toward that goal. The relationship between Sabrina and Cynthia was observed to be volatile and throughout the case Cynthia was reported to be making accusations for which the Agency could not find support. Cynthia first raised concerns about Sabrina’s role in a Las Vegas murder in May 2009, when Sabrina was moving toward increased visitation; the Agency contacted the police in Nevada and was informed there was no arrest or criminal history report for Sabrina. Cynthia reported Zachariah displaying symptoms of distress and severe diaper rashes that directly conflicted with the case workers’ and service providers’ observations. The photographs that the grandparents said they and their pediatrician took to document the rash were never provided to the Agency or the court. The grandparents reported that Zachariah was born with respiratory problems and returned from visits with Sabrina wheezing due to her smoking, but the pediatrician reported the baby had not been diagnosed with asthma or respiratory problems, and the child welfare worker who observed Zachariah on the primary occasion Cynthia cited saw no wheezing and reported the baby to be “fine and happy.” The grandparents reported problems related to Sabrina’s mental illness and medications, including that Sabrina would “become a different person,” that the medications made her fall asleep, and concern that she would

drop the baby. Sabrina's psychiatrist, however, reported that Sabrina displayed no side effects from her medication and was doing so well that, instead of the concern the psychiatrist would normally have about reuniting a child with a parent who had chronic mental health issues, she had no safety concerns about returning Zachariah to Sabrina. The grandparents reported that Zachariah would not even take a bottle from his mother, but the service providers who observed Zachariah and Sabrina together found no such problem, reporting Sabrina to be appropriately engaged with and attentive to the baby and his needs and him to be appropriately attached to Sabrina, using her as a base for exploration and reaching for her to hold him. Counsel for Sabrina, the Agency and the child all believed the grandparents were attempting to thwart reunification in the hope of being able to adopt Zachariah, and there was ample evidence to support the court's express questioning of the grandparents' motivation.

In our view, the grandparents' conduct in opposition to the goal of a reunification process that was progressing very successfully posed a distinct risk of harm to Zachariah, albeit not of a physical nature. Reunification of children with their parents whenever possible is one of the primary objectives of the dependency system. (*Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535, 546.) The court, like the case worker and service providers, was concerned about the impact of the grandparents' conduct on their relationship with Sabrina and with Zachariah. We recognize the admonition of the cases that "a court can only benefit from having all relevant information on the best interests of the child" and can choose to give little weight to information deemed unhelpful. (*In re Jacob E.*, *supra*, 21 Cal.App.4th at p. 919; *In re Patricia L.*, *supra*, 9 Cal.App.4th at p. 67.) The court's determination here, however, was that the grandparents were not reliable reporters of information. It is telling that the court's view of the grandparents in this regard changed over the course of the proceedings. The court took Cynthia's concerns about Sabrina's ability to care for Zachariah seriously, initially denying a 30-day visit that all the parties wanted despite strenuous arguments, especially from counsel for the minor. But while the court said it initially believed the grandparents possessed

unique information, it came to believe this was not the case because the grandparents, due to their love for Zachariah, had “allowed it to get a little out of hand here” with “wild” accusations. This conclusion is supported by the fact that the grandparents’ allegations were found to be unsubstantiated and directly contradicted observations by the service providers. In effect, in their desire to assume custody of Zachariah, the grandparents appeared to be working against Zachariah’s best interests by attempting to use unsubstantiated and inflammatory information to interfere with Sabrina’s successful reunification.

In light of all the circumstances of this case, the trial court did not abuse its discretion in denying the request for de facto parent status.

## **II.**

The grandparents’ second contention is that proper notice of these proceedings under ICWA was never provided to the relevant tribes. The basis of the contention appears to be that the Agency failed to investigate through Sabrina, Cynthia and available sources among paternal relatives, in order to obtain and update the information it provided to the tribes.

At the July 24, 2008 detention hearing, Sabrina reported through her attorney that she was one-quarter Arapaho on the paternal side, and she completed the ICWA form. The Agency filed a Notice of Child Custody Proceeding for Indian Child on July 24, listing under Sabrina’s information “Arapahoe Tribe, Arapahoe, Continental U.S. Indian Tribes Cheyenne-Arapaho Tribes of Oklahoma, Arapahoe, Continental U.S. Indian Tribes.” The form listed “no information available” for Zachariah’s biological father, “no information available” for Cynthia other than her name and address, and “no information available” for Sabrina’s father and grandparents.

On August 7, 2008, the Agency filed return receipt forms from the Secretary of the Interior, the Sacramento Area Director of the Bureau of Indian Affairs, the Cheyenne-Arapaho Tribes of Oklahoma, and the Arapahoe Tribe, as well as the reply from the Bureau of Indian Affairs, and requested a continuance to receive replies from the tribe.

At the hearing, when the court explained the ICWA issue, Cynthia stated, “I noticed that there was a lot of federal funding for Indian grants for college scholarships, and when I tried to get Sabrina to qualify for that, no one in the family had any certifications of any Indian ancestry. There wasn’t enough Indian blood in the family.”

The hearing was continued, and the Cheyenne and Arapaho Tribes of Oklahoma returned a reply stating ICWA did not apply because Zachariah was not eligible for enrollment. The Agency filed an addendum report recommending that Zachariah be declared a dependent and placed with the grandparents while Sabrina was offered reunification services. It stated that Sabrina agreed with these recommendations, and that ICWA did not apply. The court found that Zachariah was not an Indian child and no further notice was required under ICWA.

Pointing out that Sabrina claimed Indian heritage on her paternal side, the grandparents argue that the Agency improperly failed to inquire further of Sabrina, Cynthia, or Sabrina’s paternal relatives about genealogies. They assert the Agency was “likely aware” of Sabrina’s father’s name because it reported that Sabrina had a history with CPS as a result of being sexually abused by her father. The Agency was aware of additional paternal relatives, as it reported in July 2009 that Sabrina was in contact with paternal family members, specifically naming and providing telephone numbers for a paternal aunt, two paternal cousins, and a paternal second cousin. Additionally, the grandparents urge that since Cynthia stated at the August 12 hearing that Sabrina’s paternal uncle recently had been arrested for child molestation, Cynthia presumably knew the name of this uncle.

The grandparents assert they have standing to raise the issue of noncompliance with ICWA notice requirements because, if Zachariah is found to be an Indian child and if he is removed from Sabrina’s custody in the future, the grandparents would have a stronger placement preference under section 361.31 than they would have otherwise under section 361.3. Section 361.3 gives preferential consideration for placement of a child to the child’s adult grandparent, aunt, uncle or sibling, meaning that one of these

relatives seeking placement of the child “shall be the first placement to be considered and investigated.” (§ 361.3, subd. (c).) Section 361.3, subdivision (a), lists a number of factors to be considered in determining whether a particular placement is appropriate. Section 361.31, governing placement of an Indian child, gives placement preference to a “member of the child’s extended family,” as defined by ICWA (§ 361.31, subd. (b)(1)), and gives the court authority to determine that “good cause” exists not to follow the preferences, with the burden of establishing good cause on the party requesting that the preference not be followed (§ 361.31, subds. (h), (j)). “[E]xtended family member,” under ICWA, is “defined by the law or custom of the Indian child’s tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent[.]” (25 U.S.C. § 1903(2).)

The grandparents rely upon *In re Jonathon S.* (2005) 129 Cal.App.4th 334, 339, which held that a non-Indian mother appealing the termination of her parental rights had standing to assert ICWA notice was not properly given even though the potential Indian ancestry was on the paternal side. *In re Jonathan S.* discussed the requirement that an appellant be “aggrieved” and concluded that the mother met this requirement because if the child was determined to be an Indian child, heightened requirements for termination of parental rights would have to be met. (*Ibid.*)

It is by no means clear that application of section 366.31, rather than 361.3, would work to the grandparents’ benefit in the event Zachariah is removed from Sabrina’s home in the future, even assuming Zachariah was found to be an Indian child, especially considering that the grandparents had already been found appropriate caregivers and provided a home for him. Indeed, application of ICWA in the future might be detrimental to the grandparents’ quest for custody, since it would entail heightened requirements for removal from Sabrina or termination of her parental rights. (25 U.S.C. § 1912(e), (f).)



In any event, the grandparents’ reliance upon *In re Jonathon S.* ignores the more fundamental issue that the appellant found to have standing in that case was the child’s parent. ICWA gives standing to assert violations of its provisions to “[a]ny Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child’s tribe[.]” (25 U.S.C. § 1914.)<sup>10</sup> The grandparents fall in none of these categories. (See *In re S.M.* (2004) 118 Cal.App.4th 1108, 1114, fn. 3 [questioning whether grandmother/de facto parent had standing to assert violations of ICWA but not deciding issue].) Nor are they parties to the case.<sup>11</sup> Accordingly, they have no standing to raise the issue of adequate ICWA notice.

### DISPOSITION

The orders are affirmed.

---

Kline, P.J.

We concur:

---

Haerle, J.

---

Lambden, J.

---

<sup>10</sup> 25 U.S.C. section 1914, provides: “Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child’s tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title.”

<sup>11</sup> In light of our conclusion that the grandparents lack standing to raise the ICWA notice issue, we need not resolve the Agency’s additional arguments that ICWA does not apply because the proceedings from which the grandparents appeal—concerning de facto parent status and return of the child to the mother—do not constitute an “Indian child custody proceeding” and that the ICWA issue is moot because the child was returned to the mother.